

SENATE BILL 326
EMERGENCY BILL

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SB 607/01 - EEA

2002 Regular Session
2lr0915
CF 2lr1206

By: **Senator Dyson (Chairman, Joint Committee on the Chesapeake Bay Critical Areas) and Senators ~~Frosh and Sfikas, the President (Administration), and Senators Frosh, Sfikas, Blount, Hollinger, Collins, Conway, Harris, Schrader, and Stone~~**

Introduced and read first time: January 25, 2002
Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read Second Time: February 21, 2002
Returned to second reading: February 27, 2002
Senate action: Adopted with floor amendments
Read second time: February 28, 2002

CHAPTER_____

1 AN ACT concerning

2 **Chesapeake Bay Critical Area Protection Program**

3 FOR the purpose of altering the requirements for local critical area programs to
4 include certain variance provisions; prohibiting a variance from being granted
5 unless certain conditions are met; ~~requiring a local jurisdiction, in considering~~
6 ~~an application for a variance, to consider reasonable use of the entire parcel or~~
7 ~~lot for which the variance is requested;~~ providing that certain provisions of this
8 Act do not apply to certain permits or activities which comply with certain buffer
9 exemption plans or buffer management plans; revising the period of time for the
10 review of certain critical area programs by local jurisdictions; ~~defining a certain~~
11 ~~term;~~ removing certain obsolete language; making this Act an emergency
12 measure; and generally relating to the Chesapeake Bay Critical Area Protection
13 Program.

14 BY repealing and reenacting, without amendments,
15 Article - Natural Resources
16 Section 8-1801
17 Annotated Code of Maryland
18 (2000 Replacement Volume and 2001 Supplement)

19 BY repealing and reenacting, with amendments,

1 Article - Natural Resources
2 Section 8-1808 and 8-1809(g)
3 Annotated Code of Maryland
4 (2000 Replacement Volume and 2001 Supplement)

5 Preamble

6 WHEREAS, State lawmakers in 1984 recognized the importance of fostering
7 more sensitive development activity along the shoreline areas of the Chesapeake Bay
8 and its tributaries, from the standpoint of protecting and preserving water quality
9 and natural habitats, with the adoption of the Chesapeake Bay Critical Area
10 Protection Act; and

11 WHEREAS, The grandfathering provisions of the enabling Act and its
12 accompanying Criteria provided certain exemptions for grandfathered properties
13 from density limits, but the Criteria expressly provided that grandfathered properties
14 were not exempt from Habitat Protection Area (HPA) or water-dependent facilities
15 requirements; and

16 WHEREAS, The Criteria provide that variances to a jurisdiction's local Critical
17 Area Program may be granted in certain circumstances; and

18 WHEREAS, Recent decisions by the Maryland Court of Appeals have held that
19 a variance may be granted if the regulations would deny development on a specific
20 portion of an applicant's property rather than considering alternative locations
21 on-site; and

22 WHEREAS, The Court of Appeals has ruled that a local Board of Appeals, when
23 determining if denial of a variance would deny an applicant rights commonly enjoyed
24 by others in the Critical Area, may compare a proposal to nonconforming uses or
25 development that predated implementation of a local Critical Area Program; and

26 WHEREAS, The Court of Appeals has ruled that an applicant for a variance
27 from Critical Area requirements may generally satisfy the variance standards of a
28 local zoning ordinance, rather than satisfy all of the standards; and

29 WHEREAS, These recent rulings by the Court of Appeals are contrary to the
30 intent of the General Assembly in enacting the Chesapeake Bay Critical Area
31 Protection Act; and

32 WHEREAS, It is the intent of this Act to overrule these recent decisions of the
33 Court of Appeals regarding variances to Critical Area regulations; now, therefore,

34 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
35 MARYLAND, That the Laws of Maryland read as follows:

Article - Natural Resources

1 8-1801.

3 (a) The General Assembly finds and declares that:

4 (1) The Chesapeake Bay and its tributaries are natural resources of
5 great significance to the State and the nation;

6 (2) The shoreline and adjacent lands constitute a valuable, fragile, and
7 sensitive part of this estuarine system, where human activity can have a particularly
8 immediate and adverse impact on water quality and natural habitats;

9 (3) The capacity of these shoreline and adjacent lands to withstand
10 continuing demands without further degradation to water quality and natural
11 habitats is limited;

12 (4) National studies have documented that the quality and productivity
13 of the waters of the Chesapeake Bay and its tributaries have declined due to the
14 cumulative effects of human activity that have caused increased levels of pollutants,
15 nutrients, and toxics in the Bay System and declines in more protective land uses
16 such as forestland and agricultural land in the Bay region;

17 (5) Those portions of the Chesapeake Bay and its tributaries within
18 Maryland are particularly stressed by the continuing population growth and
19 development activity concentrated in the Baltimore-Washington metropolitan
20 corridor;

21 (6) The quality of life for the citizens of Maryland is enhanced through
22 the restoration of the quality and productivity of the waters of the Chesapeake Bay
23 and its tributaries;

24 (7) The restoration of the Chesapeake Bay and its tributaries is
25 dependent, in part, on minimizing further adverse impacts to the water quality and
26 natural habitats of the shoreline and adjacent lands;

27 (8) The cumulative impact of current development is inimical to these
28 purposes; and

29 (9) There is a critical and substantial State interest for the benefit of
30 current and future generations in fostering more sensitive development activity in a
31 consistent and uniform manner along shoreline areas of the Chesapeake Bay and its
32 tributaries so as to minimize damage to water quality and natural habitats.

33 (b) It is the purpose of the General Assembly in enacting this subtitle:

34 (1) To establish a Resource Protection Program for the Chesapeake Bay
35 and its tributaries by fostering more sensitive development activity for certain
36 shoreline areas so as to minimize damage to water quality and natural habitats; and

1 (2) To implement the Resource Protection Program on a cooperative
2 basis between the State and affected local governments, with local governments
3 establishing and implementing their programs in a consistent and uniform manner
4 subject to State criteria and oversight.

5 8-1808.

6 (a) (1) It is the intent of this subtitle that each local jurisdiction shall have
7 primary responsibility for developing and implementing a program, subject to review
8 and approval by the Commission.

9 (2) The Governor shall include in the budget a sum of money to be used
10 for grants to reimburse local jurisdictions for the reasonable costs of developing a
11 program under this section. Each local jurisdiction shall submit to the Governor [by
12 October 31, 1984] a detailed request for funds that are equivalent to the additional
13 costs incurred in developing the program under this section.

14 (3) The Governor shall include in the budget annually a sum of money to
15 be used for grants to assist local jurisdictions with the reasonable costs of
16 implementing a program under this section. Each local jurisdiction shall submit to
17 the Governor by May 1 of each year a detailed request for funds to assist in the
18 implementation of a program under this section.

19 (b) A program shall consist of those elements which are necessary or
20 appropriate:

21 (1) To minimize adverse impacts on water quality that result from
22 pollutants that are discharged from structures or conveyances or that have run off
23 from surrounding lands;

24 (2) To conserve fish, wildlife, and plant habitat; and

25 (3) To establish land use policies for development in the Chesapeake Bay
26 Critical Area which accommodate growth and also address the fact that, even if
27 pollution is controlled, the number, movement, and activities of persons in that area
28 can create adverse environmental impacts.

29 (c) At a minimum, a program sufficient to meet the goals stated in subsection
30 (b) of this section includes:

31 (1) A map designating the critical area in a local jurisdiction;

32 (2) A comprehensive zoning map for the critical area;

33 (3) As necessary, new or amended provisions of the jurisdiction's:

34 (i) Subdivision regulations;

35 (ii) Comprehensive or master plan;

36 (iii) Zoning ordinances or regulations;

- 1 (iv) Provisions relating to enforcement; and
- 2 (v) Provisions as appropriate relating to grandfathering of
3 development at the time the program is adopted or approved by the Commission;
- 4 (4) Provisions requiring that project approvals shall be based on findings
5 that projects are consistent with the standards stated in subsection (b) of this section;
- 6 (5) Provisions to limit the amount of land covered by buildings, roads,
7 parking lots, or other impervious surfaces, and to require or encourage cluster
8 development, where necessary or appropriate;
- 9 (6) Establishment of buffer areas along shorelines within which
10 agriculture will be permitted only if best management practices are used, provided
11 that structures or any other use of land which is necessary for adjacent agriculture
12 shall also be permitted in any buffer area;
- 13 (7) Requirements for minimum setbacks for structures and septic fields
14 along shorelines;
- 15 (8) Designation of shoreline areas, if any, that are suitable for parks,
16 hiking, biking, wildlife refuges, scenic drives, public access or assembly, and
17 water-related recreation such as boat slips, piers, and beaches;
- 18 (9) Designation of shoreline areas, if any, that are suitable for ports,
19 marinas, and industries that use water for transportation or derive economic benefits
20 from shore access;
- 21 (10) Provisions requiring that all harvesting of timber in the Chesapeake
22 Bay Critical Area be in accordance with plans approved by the district forestry board;
- 23 (11) Provisions establishing that the controls in a program which are
24 designed to prevent runoff of pollutants will not be required on sites where the
25 topography prevents runoff from directly or indirectly reaching tidal waters; [and]
- 26 (12) Provisions for reasonable accommodations in policies or procedures
27 when the accommodations are necessary to avoid discrimination on the basis of
28 physical disability, including provisions that authorize a local jurisdiction to require
29 removal of a structure that was installed or built to accommodate a physical disability
30 and require restoration when the accommodation permitted by this paragraph is no
31 longer necessary; AND
- 32 (13) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
33 PROVISIONS FOR GRANTING A VARIANCE TO THE LOCAL JURISDICTION'S CRITICAL
34 AREA PROGRAM, IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE
35 COMMISSION CONCERNING VARIANCES SET FORTH IN COMAR 27.01.11.
- 36 (D) (1) ~~IN THIS SUBSECTION, "UNWARRANTED HARDSHIP" MEANS THAT,~~
37 ~~WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND~~

1 ~~SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS~~
2 ~~REQUESTED.~~

3 ~~(2)~~ A VARIANCE TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM
4 MAY NOT BE GRANTED UNLESS:

5 (I) DUE TO SPECIAL FEATURES OF A SITE, OR SPECIAL
6 CONDITIONS OR CIRCUMSTANCES PECULIAR TO THE APPLICANT'S LAND OR
7 STRUCTURE, A LITERAL ENFORCEMENT OF THE CRITICAL AREA PROGRAM WOULD
8 RESULT IN UNWARRANTED HARDSHIP TO THE APPLICANT;

9 (II) THE LOCAL JURISDICTION FINDS THAT THE APPLICANT HAS
10 SATISFIED EACH ONE OF THE VARIANCE PROVISIONS SET FORTH IN THE LOCAL
11 JURISDICTION'S CRITICAL AREA PROGRAM; AND

12 (III) WITHOUT THE VARIANCE, THE APPLICANT WOULD BE
13 DEPRIVED OF A USE OF LAND OR A STRUCTURE PERMITTED TO OTHERS IN
14 ACCORDANCE WITH THE PROVISIONS OF THE JURISDICTION'S CRITICAL AREA
15 PROGRAM.

16 ~~(3)~~ ~~(2)~~ IN CONSIDERING AN APPLICATION FOR A VARIANCE, A LOCAL
17 JURISDICTION SHALL CONSIDER THE REASONABLE USE OF THE ENTIRE PARCEL OR
18 LOT FOR WHICH THE VARIANCE IS REQUESTED.

19 ~~(4)~~ ~~(3)~~ THIS SUBSECTION DOES NOT APPLY TO BUILDING PERMITS OR
20 ACTIVITIES THAT COMPLY WITH A BUFFER EXEMPTION PLAN OR BUFFER
21 MANAGEMENT PLAN OF A LOCAL JURISDICTION WHICH HAS BEEN APPROVED BY
22 THE COMMISSION.

23 [(d)] (E) (1) The Commission shall adopt by regulation on or before
24 December 1, 1985 criteria for program development and approval, which are
25 necessary or appropriate to achieve the standards stated in subsection (b) of this
26 section. Prior to developing its criteria and also prior to adopting its criteria, the
27 Commission shall hold at least 6 regional public hearings, 1 in each of the following
28 areas:

- 29 (i) Harford, Cecil, and Kent counties;
- 30 (ii) Queen Anne's, Talbot, and Caroline counties;
- 31 (iii) Dorchester, Somerset, and Wicomico counties;
- 32 (iv) Baltimore City and Baltimore County;
- 33 (v) Charles, Calvert, and St. Mary's counties; and
- 34 (vi) Anne Arundel and Prince George's counties.

35 (2) During the hearing process, the Commission shall consult with each
36 affected local jurisdiction.

1 [(e)] (F) Nothing in this section shall impede or prevent the dredging of any
2 waterway in a critical area. However, dredging in a critical area is subject to other
3 applicable federal and State laws and regulations.

4 8-1809.

5 (g) Each local jurisdiction shall review its entire program and propose any
6 necessary amendments to its entire program, including local zoning maps, at least
7 every [4] 6 years [beginning with the 4-year anniversary of the date that the
8 program became effective and every 4 years after that date] ~~IN COORDINATION WITH~~
9 ~~THE REVIEW OF THE COMPREHENSIVE PLAN BY THE PLANNING COMMISSION AS~~
10 ~~REQUIRED UNDER ARTICLE 66B, §§ 1.03(B) AND 3.05(B) OF THE CODE.~~ Each local
11 jurisdiction shall send in writing to the Commission, within 60 days after [each
12 4-year anniversary,] ~~THE COMPLETION OF ITS REVIEW,~~ the following information:

13 (1) A statement certifying that the required review has been
14 accomplished;

15 (2) Any necessary requests for program amendments, program
16 refinements, or other matters that the local jurisdiction wishes the Commission to
17 consider;

18 (3) An updated resource inventory; and

19 (4) A statement quantifying acreages within each land classification, the
20 growth allocation used, and the growth allocation remaining.

21 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
22 ~~June 1, 2002.~~

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
24 measure, is necessary for the immediate preservation of the public health or safety,
25 has been passed by a yea and nay vote supported by three-fifths of all the members
26 elected to each of the two Houses of the General Assembly, and shall take effect from
27 the date it is enacted.